IN THE HIGH COURT OF JUDIATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5157 OF 1991

The Rupee Co-operative
Bank Ltd., Thane .. Petitioners.
Vs.
1.M/s.Mayur Textiles and Ors. .. Respondents.

ALONGWITH

WRIT PETITION NO.5158 OF 1991

The Rupee Co-operative
Bank Ltd., Thane .. Petitioners.
Vs.
1.Suparna Silk Mills & Ors. .. Respondents.

ALONGWITH

WRIT PETITION NO.5159 OF 1991

The Rupee Co-operative
Bank Ltd., Thane .. Petitioners.
Vs.
1.M/s.Dada Synthetics & Ors. .. Respondents.

Mr.Y.R.Naik for the petitioners.
Mr.Vikram Pai for respondent no.1.

CORAM: D.B.BHOSALE, J.

DATED: 2ND SEPTEMBER, 2005.

P.C.:

. These three writ petitions are arising from the orders passed by the courts below on the applications filed by the respondents seeking interim injunction in terms of prayer clause (e) of paragraph 18 of the dispute filed by them under section 91 of the Maharashtra Co-operative Societies Act, 1960 (for short "the Act"). The respondents have filed three disputes under section

91 on 5th July, 1991 challenging the recovery certificates under section 101 of the Act. Prayer clause (e) of paragraph 18 reads thus:

> "(e) Pending hearing and final disposal of the dispute the opponents, their agents and person or persons claiming through or under them and each of them is restrained by an order and injunction of this Honourable Court from recovering and/or acting in any manner whatsoever on the certificate dated 15.6.1990 issued by the District Deputy Registrar, C.S. Thane".

2. The Co-operative Court by its order dated 6.7.1991 had granted ad-interim relief in terms of prayer clause (e) and it was confirmed by the judgment and order dated 5.9.1991. Feeling aggrieved by the judgment and order of the Co-operative Court the petitioners preferred three appeals before the Co-operative Appellate Court. The Co-operative Appellate Court affirmed the orders passed by the Co-operative Court in all the three disputes by common judgment and order dated 16.8.1991. These writ petitions challenge the aforesaid orders passed by the Courts below dated 5.9.1991 and 16.8.1991.

3. While admitting this writ petitions on 22.11.1991 the following order was passed:

> "1. There is considerable force in the submission of Dr.Naik that the impugned order is without jurisdiction.

Determination of this point shall, however, require detailed scrutiny at the final hearing of the petition. Hence the petition is admitted. Rule Nisi to issue.

2. Interim order of injunction dated 5th September, 1991 is stayed and is substituted by the following order:

(i) Pending hearing and final disposal of the dispute, respondent no.1 shall deposit a sum of Rs.3 lakhs in the Co-operative Court on or before 6th December, 1991.

(ii) Pending hearing and final disposal of the dispute, the respondent no.1 shall deposit a sum of Rs.1.50 lakhs per month in the Co-operative Court, first of such deposit to be made on or before 6th January, 1992 and each subsequent deposit to be made on or before the 6th of each succeeding month.

(iii) Liberty to the petitioner to withdraw the said amount without prejudice to the rights and contentions of the parties and subject to accounting.

(iiia) On the conditions aforesaid, stay of recovery certificate in question.

(iv) In the event of the respondent no.1 not depositing the above referred sum of Rs.3 lakhs or committing any two defaults in respect of the above referred sum of Rs.1.50 lakhs every month, order of interim relief shall automatically stand vacated and the petitioner shall be entitled to recover the entire amount at one time after giving credit for part payments received, if any.

3. Hearing of the petition is expedited. The petition shall appear on board for final hearing in February 1992 as an expedited matter.

4. Hearing of the dispute is expedited. The Co-operative Court is directed to dispose of the dispute latest by 31st December, 1992.

> 5. Learned counsel for respondents waives service.
>
> 6. Issue of certified copy of this order is expedited."

4. The learned counsel appearing for the parties are not in a position to state whether the disputes filed by the respondents under section 91 of the Act are pending. Mr.Naik, learned counsel for the petitioners, however, submitted that the respondents have not complied with the directions given by this court vide order dated 22.11.1991. He further submitted that in any case the dispute itself is not maintainable and the ground to that effect was specifically taken by the petitioners in paragraph 8 (b) and (e) of the petition. The grounds 8(b) and (e) reads thus:

> "(b) That the orders of both the Courts below are contrary to the proviso to section 91 of the said Act, which categorically states that no dispute under section 91 would be competent in respect of a certificate granted by the Registrar under section 101 of the said Act. Therefore, a dispute is barred under setion 91 in respect of adjudication which has taken place under section 101 of the Act. Notwithstanding the same, both the orders impugned herein have been made which are null and void, having regard to the fact no dispute under section 91 could be maintained in respect of a certificate under section 101.
>
> (e) That both the lower Courts have ignored the fact that a certificate under section 101 of the said Act, subject to right of revision under section 154 of the said Act, is final, conclusive and binding

upon the parties by virtue of sub-section (45) of section 152 and sub-section (3) of section 153 of the said Act."

5. In support of this contention he placed reliance upon the judgment of this court in **Kedarling Vikas Seva Scy.Ltd. Vs. Dinkar Bhimrao Raut & Others 2002 (Supp.2) Bom.C.R.195.** Paragraph 4 of the said judgment reads thus:

"4. Having considered the rival submissions I would first advert to the decision in the case of Bhusaval Peoples Co-operative Bank Ltd. (supra) relied by the Counsel for the petitioner. In paras 10 and 11 of the said decision, the Court has analyzed the scheme of section 91 and section 101 of the Act and has unequivocably found that on conjoint reading of sub-sections (1) and (2) and (3) of section 101, it makes it plainly clear that the provisions of section 91 is not available whereas finality is attached to the certificate issued under section 101 and it is a conclusive proof of arrears. The Court has observed that when the statute gives finality to the action or order, the only way to challenge the same is in the manner as provided by the statute. In such cases, dispute under section 91 is not the proper remedy, albeit completely barred. The only remedy to challenge the certificate is by way of revision under section 154 of the Act. In the said case, no doubt the disputant had not challenged the certificate before the revisional authority at all, whereas in the present case the respondent no.1 had filed revision application but failed to succeed in the said proceedings. Reliance has been placed on the observations made by the revisional authority to contend that the present disputes have been filed pursuant to the liberty granted to them in that behalf. But this would make no difference to the application of law relating to the

> maintainability of dispute under setion 91 so as to challenge a certificate issued under section 101 of the Act. Moreover the proper reading of the said observations would be that the revisional authority has said that tehre was no merits to the challenge relating to the subject certificate(s) issued against the respondent no.1. The revisional authority has clearly observed that in so far as contention regarding Benami and genuineness of the entry is concerned, the same cannot be gone into in that action. It has been further observed that the respondent No.1 if so advised may file appropriate proceedings before the appropriate Court. That by itself cannot clothe the respondents with a right to institute a dispute under section 91 of the Act to challenge the certificate issued under section 101. For as observed earlier, this Court has already held that such a course is impermissible and is barred. In that view of the matter the dispute(s) as filed by the respondent No.1 in both the writ petitions would not be maintainable in law."

6. It is thus clear that the scheme of section 91 and section 101 of the Act makes it clear that the provisions of section 91 is not available to challenge the certificate issued under section 101 of the Act and the finality is attached to such certificate and it is conclusive proof of arrears. In other words the dispute under section 91 is not proper remedy, albeit completely barred. The only remedy to challenge the certificate is by way of revision under section 154 of the Act. Mr.Pai, learned counsel for the respondents-disputants could not and did not dispute this legal position

and fairly stated that the respondents be given liberty to take appropriate remedy to challenge the certificates. In this view of the matter the writ petitions would succeed and the impugned orders passed by the courts below are set aside and the disputes filed by the respondents-disputants also stand dismissed as not maintainable. I do not wish to express any opinion as to whether any remedy is available in law to the respondents-disputants to challenge the impugned certificates issued under section 101 of the Act. However, it is open for them to adopt any such remedy as may be available in law. If they challenge the recovery certificates, such challenge may be considered in accordance with law. In the result all the writ petitions are allowed. Rule is made absolute.

(D.B.Bhosale, J.)